



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,620	12/21/2001	Daniela Giacchetti	05725.0981-00	3957

7590 12/01/2004

FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
----------	--------------

3629

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,620

Applicant(s)

GIACCHETTI ET AL.

Examiner

Igor Borissov

Art Unit

3629



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Amendment received on 8/30/2004 is acknowledged and entered. New claims 44-48 have been added. Claims 1-48 are currently pending in the application.

Upon reconsideration, Claim Rejections under 35 USC § 101 have been withdrawn. The examiner interprets claims in light of specification. Specifically, the examiner interprets the method steps of: *maintaining beauty information in a data structure*; and *presenting to the subject an image of a virtual consultant* as method steps performed by a computer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. (WO 01/18674 A2) in view of Rosenblatt et al. (US 2002/0007276).

Maloney et al. (hereinafter Maloney) teaches a method and system for providing a customized product combination to a consumer, comprising:

Independent Claims.

Claim 1, 22 and 33. Maintaining beauty information in a data structure (page 7, lines 9-16); receiving personal information about a subject (page 6, line 29); selecting and presenting to the subject at least some beauty information maintained in the data structure based on the received information (queries) (page 7, lines 11-16, 28-29);

wherein selecting and presenting beauty information includes displaying an image of the consumer to display virtual results of the product selected (page 20, lines 27-29).

Maloney does not specifically teach that said presented to the consumer image is an image of a virtual beauty consultant.

Rosenblatt et al. (hereinafter Rosenblatt) teaches a method and system for virtual representatives adapted to be used as communications tools for Web retailers in customer-support applications, comprising a three-dimensional, photo-realistic, voice-enabled computer animation serving as a "virtual representative" [0007]; [0041].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include that said presented to the consumer image is an image of a virtual beauty consultant, as disclosed in Rosenblatt, because it would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially increase revenue.

Dependent claims.

Claims 2 and 40. Said method and system, wherein beauty information includes personal queries (page 7, lines 28-29).

Claim 3. Said method, wherein beauty information includes at least one of a product recommendation, a diagnostic recommendation, a cosmetic usage recommendation, a prediction, a beauty profile, a preventative measure, and a remedial measure (page 7, lines 30-31).

Claims 4 and 40-41. Said method and system, comprising recording answers to the queries and asking the user additional queries incorporating into the additional queries information reflective of recorded answers (page 18, lines 1-9).

Claims 5 and 6. See **claim 22**.

Claims 7-8, 12, 23, 29, 34 and 39. Said method and system, wherein the beauty information is stored in a data structure connected to the Internet, and wherein the method further comprises providing the subject with access to the data structure over the Internet (page 16, lines 20-34; page 18, lines 21-34).

Claim 9. See reasoning applied to **claim 22**.

Claim 10. Said method, wherein receiving personal information includes obtaining the information from the subject via an audio capture device (page 6, lines 30-31).

Claims 11 and 13. See reasoning applied to **claim 1**.

Claims 14, 27 and 38. See reasoning applied to **claim 1**.

Claims 15 and 26. Maloney teaches said method and system, including presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29); said (photographic) image is acquired (pre-recorded) via a device supplied in the test kit (page 26, claim 20).

Claims 16-17. Said method, wherein presenting to the subject an image of a virtual beauty consultant involves allowing the subject to choose an image to be presented (Rosenblatt; [0008]).

Claims 18, 24 and 35. Presenting to the subject includes causing a synthesized human voice to be audibly projected through an audio output device (Rosenblatt; [0026]).

Claim 19, 27 and 36. Said method, wherein presenting includes causing a pre-recorded human voice to be audibly projected to the user (Rosenblatt [0028]; [0031]; [0036]).

Claims 20 and 31. Maloney teaches: displaying an image of the consumer to display virtual results of the product selected (page 20, lines 27-29).

Maloney does not specifically teach that said presented image is an image of a virtual user.

Rosenblatt teaches: displaying a three-dimensional, photo-realistic, voice-enabled computer animation of a human head serving as a "virtual representative" (user) ([0007]; [0036]; [0041]).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include that said presented image is an image of a human head serving as a "virtual representative" (user), as disclosed in Rosenblatt, because it would advantageously attract to e-shopping those customers who prefer to

see the actual results of the use of cosmetic products, thereby potentially increase revenue.

Claims 21 and 32. See reasoning applied to **claims 15 and 26**.

Claim 28. See reasoning applied to **claim 22**.

Claim 30. Identifying to the subject at least one beauty test (page 11, lines 6-23). Providing trained specialists for performing said test obviously indicates guidance in conducting said test.

Claim 37. See reasoning applied to **claim 22**.

Claim 42. Displaying various human virtual representatives to the subject through the terminal (Rosenblatt; [0008]), thereby obviously indicate interaction with the subject.

Claim 43. See reasoning applied to **claim 15**.

Claim 44. Maloney teaches said computer implemented method, including: based on the received personal information about a subject (page 6, line 29); selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29), thereby obviously indicating "automatic" mode.

Claim 45. Maloney teaches said computer implemented method, including: based on the received personal information about a subject (page 6, line 29); automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29).

Claim 46. Maloney teaches said computer implemented method, including: based on the received personal information about a subject (page 6, line 29); automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29); wherein said received personal information about a subject includes a lifestyle information (page 7, line 22), thereby obviously indicating information related to habits of the subject.

Claim 47. Maloney teaches said computer implemented method, including: automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29); wherein said presenting step is conducted in a customizable environment (page 16, lines 19-20).

Claim 48. Maloney teaches said computer implemented method, including: automatically selecting and presenting to the subject an image of the consumer (subject) to display virtual results of the selected product (page 20, lines 27-29), thereby obviously indicating presenting to the subject a personification of the subject.

Response to Arguments

Applicant's arguments filed 8/30/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Maloney and Rosenblatt relate to displaying interactive realistic images (computer animations) to consumers in e-commerce environment. The motivation to combine Maloney with Rosenblatt to include that said presented to the consumer image is an image of a virtual beauty consultant would be to advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially increase revenue.

In response to applicant's argument that the prior art does not disclose: *presenting to the subject an image of a virtual user receiving the beauty information*, it is noted, that Maloney teaches: displaying an image of the consumer to display virtual results of the product selected (page 20, lines 27-29); Rosenblatt teaches: displaying a three-dimensional, photo-realistic, voice-enabled computer animation of a human head serving as a "virtual representative" (user) ([0007]; [0036]; [0041]. The motivation to

Art Unit: 3629

combine Maloney with Rosenblatt would be to advantageously attract to e-shopping those customers who prefer to see the actual results of the use of cosmetic products, thereby potentially increase revenue.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

(703) 872-9306

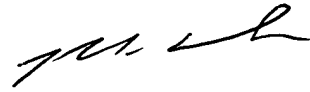
[Official communications; including After Final
communications labeled "Box AF"]

Art Unit: 3629

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

IB

11/19/2004



JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600